

**COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE SECRETARY OF THE COMMONWEALTH  
SECURITIES DIVISION  
ONE ASHBURTON PLACE, ROOM 1701  
BOSTON, MASSACHUSETTS 02108**

IN THE MATTER OF: )  
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 )  
 BARRY GRAHAM ARMSTRONG, ) Docket No. 2015-0092 )  
 ) )  
 Respondent. )  
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SECURITIES DIVISION

**ADMINISTRATIVE COMPLAINT**

**I. PRELIMINARY STATEMENT**

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the “Enforcement Section” and the “Division,” respectively) files this Administrative Complaint (the “Complaint”) to commence an adjudicatory proceeding against Barry Graham Armstrong (“Respondent”), for violations of MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the “Act”), and 950 MASS. CODE REGS. 10.00-14.413 (the “Regulations”). The Enforcement Section alleges that Respondent engaged in a dishonest and misleading advertising campaign in violation of the Act and Regulations.

The Enforcement Section seeks an order: 1) finding as fact the allegations contained in the Complaint; 2) requiring Respondent to permanently cease and desist from further conduct in violation of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G) in the Commonwealth; 3) finding that all sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors; 4) censuring Respondent; 5) imposing an administrative fine on Respondent for each violation of the Act; and 6) taking any such further actions which may be necessary or appropriate in the public interest for the protection of Massachusetts investors.

## **II. SUMMARY**

In the summer of 2014, Barry Armstrong ran a deceptive AM radio advertising campaign targeted at vulnerable Massachusetts senior citizens. Armstrong's radio ads trumpeted the looming dangers of Alzheimer's disease, while implying that Armstrong is an individual with special access to medical information and support. Armstrong is not – he is a financial professional looking to grow his business with senior clients. The radio ads combined the format of a public service announcement with alarmist language designed to pull in senior citizens with concerns about Alzheimer's disease, meanwhile failing to adequately disclose the nature of the services that Armstrong actually offers, the identity of the speaker in the ads, that speaker's access to information, and that speaker's telephone number and use of caller's contact information.

While the advertisements instructed listeners to call the speaker's telephone number to receive free information on Alzheimer's disease, Armstrong Advisory Group had actually hired a third-party telephone service to receive phone calls at the provided number. After listeners called the number, their contact information was taken down by the answering service and relayed to Armstrong Advisory Group, which then employed telemarketers to phone the callers and advertise the services of Armstrong Advisory Group. In addition, Armstrong Advisory Group mailed sets of materials to each caller, including a cover letter offering Armstrong Advisory Group's advisory services. Armstrong pulled a "bait and switch," falsely advertising one service to obtain contact information, and switching it out for another – financial services.

## **III. JURISDICTION AND AUTHORITY**

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to chapter 110A of Massachusetts General Laws.

2. The Enforcement Section brings this action pursuant to the authority conferred upon the Division by Section 407A of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and the Regulations.
3. The Enforcement Section brings this action pursuant to the authority conferred upon the Division by Section 204 of the Act, wherein the Division has the authority to impose an administrative fine, censure, or deny, suspend, or revoke the registration of an applicant or registrant.
4. This proceeding is brought in accordance with Sections 204 and 407A of the Act and its Regulations.
5. The Enforcement Section reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

#### **IV. RELEVANT TIME PERIOD**

6. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of June 1, 2012 to present (the “Relevant Time Period”).

#### **V. RESPONDENT**

7. Barry Graham Armstrong (“Armstrong”) is a resident of Massachusetts. Armstrong has a Financial Industry Regulatory Authority (“FINRA”) Central Registration Depository (“CRD”) number of 1305112. Armstrong’s applications in Massachusetts for registration as an investment adviser representative for Securities America Advisors and broker-dealer agent for Securities America were allowed in January 2007. Armstrong is the owner, manager, and resident agent of Armstrong Advisory Group. Armstrong holds licenses in Series 6, 7, 24, 26, 63, and 65.

## VI. OTHER RELEVANT INDIVIDUALS AND ENTITIES

8. Securities America, Inc. (“Securities America”) is a broker-dealer subsidiary of Ladenburg Thalmann Financial Services Inc., with headquarters in Nevada. Securities America has a FINRA CRD number of 10205, and has been registered with the Commonwealth of Massachusetts since January 7, 1985.
9. Armstrong Advisory Group is a business organization with a FINRA CRD number of 164380 and a business address of 144 Gould Street #210, Needham Heights, Massachusetts 02494. Although Armstrong Advisory Group has been assigned a CRD number, Armstrong Advisory Group is not separately registered with any regulator. Barry Graham Armstrong is the owner, manager, and resident agent of Armstrong Advisory Group.
10. Telephone Answering Service is a call center operator and live telephone answering service.

## VII. STATEMENT OF FACTS

### A. **Armstrong Advisory Group advertises over AM radio.**

11. Armstrong is the host of a radio show called “The Financial Exchange.”
12. According to Armstrong Advisory Group’s website, at [www.armstrongadvisorygroup.com](http://www.armstrongadvisorygroup.com), The Financial Exchange “combines Barry’s knowledge of personal finance with some of the best industry experts.”
13. Armstrong has been the host of The Financial Exchange on numerous Massachusetts AM radio stations since 2011.
14. Armstrong and Armstrong Advisory Group also advertise extensively over the radio. Armstrong Advisory Group advertisements have aired on numerous Massachusetts AM radio stations.

15. Armstrong Advisory Group has an annual advertising budget of between \$300,000 and \$500,000.
16. Armstrong Advisory Group advertises primarily on a talk radio station that is the largest Massachusetts AM radio station in terms of listenership, and has an annual budget of approximately \$80,000 to \$120,000 for this station (or sixteen to forty percent of Armstrong Advisory Group's total advertising budget).
17. Armstrong personally writes Armstrong Advisory Group's radio advertisements.
18. Armstrong voices Armstrong Advisory Group's radio advertisements.
19. Armstrong Advisory Group employed a telemarketing and call center service starting in 2013.
20. As of December 2014, Armstrong Advisory Group paid Telephone Answering Service \$3,000 to \$5,000 per month.
21. Armstrong Advisory Group radio advertisements provided a telephone number for listeners to call during the Relevant Time Period.
22. The telephone number provided for listeners to call was used by the answering service to take calls resulting from Armstrong's radio advertisements and collect caller information *en mass* for telemarketing and mailing purposes.

**B. Armstrong Advisory Group and Securities America ran a misleading advertising campaign.**

23. Armstrong testified before the Enforcement Section that Armstrong Advisory Group manages about one thousand households, each containing one or more accounts.
24. Armstrong testified before the Enforcement Section that the majority of Armstrong Advisory Group's clients are senior citizens from Massachusetts.

25. Armstrong Advisory Group ran a radio campaign in July 2014 called “Alzheimer's Campaign.”
26. Armstrong Advisory Group submitted three different radio advertisements to Securities America for review as part of its Alzheimer's radio campaign (the “Alzheimer's Advertisements”).
27. Members of Compliance Review are instructed to and purport to listen to recordings of any radio advertisements as part of their final review and approval.
28. Compliance Review approved all three of the Alzheimer's Advertisements.<sup>1</sup>
29. Armstrong Advisory Group Employee No. 1 submitted Alzheimer's Advertisement No. 1 on behalf of Armstrong Advisory Group to Compliance Review on May 15, 2014.
30. Alzheimer's Advertisement No. 1 first aired on June 30, 2014.
31. Alzheimer's Advertisement No. 1 aired Monday to Friday numerous times per day in July 2014.
32. The text of Alzheimer's Advertisement No. 1 is reproduced below as provided to the Division by Securities America:

Alzheimer's disease is the most common cause of dementia among older people and it is estimated that as many as 5.1 million Americans may already have Alzheimer's. What are the chances that you may be among them? Damage to the brain can start a decade or more before symptoms become evident, including memory loss, trouble handling money and paying bills, repeating questions, taking longer to complete normal daily tasks, poor judgment and having some mood and personality changes. Caring for a person with Alzheimer's disease can have high physical, emotional and financial costs. Becoming well informed about the disease is one important long-term strategy and it's important that you also learn how to protect your assets in the event you, your spouse or a loved one is faced with extended nursing home care. We have made available a detailed 8-page Alzheimer's fact sheet, along with important information on providing care and positioning yourself and your assets legally to help protect each other. This free guide is yours by calling our office at [phone number redacted]. Don't leave

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<sup>1</sup> Securities America did not produce to the Enforcement Section documentation or information showing that Alzheimer's Advertisements Nos. 2 and 3, despite being approved, ultimately aired on the radio.

your future to chance. [Phone number redacted]. Securities offered through Securities America, Inc. and advisory services offered through Securities America Advisors, Inc. Member FINRA/SIPC. Barry Armstrong Representative. Armstrong Advisory Group and the Securities America Companies are Unaffiliated.

(Emphasis added.)

33. An Armstrong Advisory Group employee submitted Alzheimer's Advertisement Nos. 2 and 3 on behalf of Armstrong Advisory Group to Compliance Review on May 27, 2014.

34. The text of Alzheimer's Advertisement No. 2 is reproduced below as provided to the Division by Securities America:

Did you know that Alzheimer's disease is THE MOST COMMON CAUSE OF Dementia? And due to the growth of Alzheimer's disease, dementia is taking an enormous toll on our society, our spouses, our children and other family members. Alzheimer's is not a normal part of aging however the greatest known risk factor is increasing age. Get the facts about Alzheimer's disease with our free fact sheet available now. Call us today at [phone number redacted] to learn more about Alzheimer's disease and dementia. Alzheimer's has no current cure, but treatments for symptoms are available. If you or a loved one has been diagnosed with Alzheimer's or a related dementia, you're not alone. Learn what resources there are to support those affected by the disease. THAT NUMBER AGAIN IS [phone number redacted]. Securities offered through Securities America, Inc. Member FINRA/SIPC and advisory services offered through Securities America Advisors, Inc., Barry Armstrong Representative. Armstrong Advisory Group and the Securities America Companies are Unaffiliated.

(Emphasis added.)

35. The text of Alzheimer's Advertisement No. 3 is reproduced below as provided to the Division by Securities America:

Have you or a loved one been diagnosed with Alzheimer's disease? You're not alone! Every 67 seconds SOMEONE IN THE UNITED STATES DEVELOPES [sic] ALZHEIMER'S and an estimated 5.2 million Americans will have the disease in 2014. That number will continue to escalate rapidly in the coming years as the baby boom generation ages. Get the facts about Alzheimer's disease with our free information sheet available now. Call us today at [phone number redacted] to learn more about Alzheimer's disease and dementia. Research has revealed a great deal, but there is still much more to be discovered. Alzheimer's is officially the 6th leading cause of death in the U.S. Educate yourself about the impact of this disease and what resources there are available to support those

affected. THAT NUMBER AGAIN IS [*phone number redacted*]. Securities offered through Securities America, Inc. Member FINRA/SIPC and advisory services offered through Securities America Advisors, Inc., Barry Armstrong Representative. Armstrong Advisory Group and the Securities America Companies are Unaffiliated.

(Emphasis added.)

36. The disclaimer at the end of the Alzheimer's Advertisements is a standardized disclaimer required to follow every radio advertisement submitted to Securities America and Securities America Advisors by Armstrong Advisory Group.
37. Securities America and Securities America Advisers provided the standardized disclaimer to Armstrong Advisory Group.
38. Other than the standardized disclaimer, the Alzheimer's Advertisements as provided to the Enforcement Section by Securities America do not name or otherwise refer to Securities America, Securities America Advisors, Armstrong, or Armstrong Advisory Group.
39. Other than the standardized disclaimer, the Alzheimer's Advertisements as provided to the Enforcement Section by Securities America do not refer to the investment advisory or broker-dealer services actually rendered by Securities America, Securities America Advisors, Armstrong, or Armstrong Advisory Group.
40. Other than the standardized disclaimer, a telephone number is the only identifying information provided in the Alzheimer's Advertisements as provided to the Enforcement Section by Securities America.

**C. Armstrong Advisory Group, Securities America, and Securities America Advisors attempt to obtain clients by misleading Massachusetts investors.**

41. Individuals who called the number provided in the Alzheimer's Advertisements were not connected to Armstrong or Armstrong Advisory Group, but rather to the Telephone Answering Service.



42. The answering service obtained the contact information of the individuals calling the number included in the Alzheimer's Advertisements.
43. The answering service then communicated the contact information obtained from the callers to Armstrong Advisory Group.
44. Telemarketers employed by Armstrong Advisory Group then used the contact information to call the individuals who had called the answering service, and to send out marketing materials from Armstrong Advisory Group to those individuals.
45. Armstrong personally trained the telemarketers employed by Armstrong Advisory Group.
46. Armstrong Advisory Group mailed the following materials to the individuals who called the answering service:
  - A marketing letter from Armstrong Advisory Group advertising Armstrong Advisory Group's services (the "Letter").
  - A fact sheet with information about Alzheimer's disease (the "Fact Sheet").
  - An article on personal care contracts written by a law firm.
47. The Fact Sheet with information about Alzheimer's disease (the "Fact Sheet") is published by the National Institute on Aging.
48. The Fact Sheet is part of the public domain and is freely and publicly available.
49. Armstrong Advisory Group did not pay to obtain the Fact Sheet.
50. Armstrong Advisory Group has no access to the Fact Sheet different from that of the general public.
51. The Letter is a generic cover letter that Armstrong Advisory Group sends out as part of all of its advertising campaigns.
52. The Letter makes no reference to Alzheimer's disease.

53. The Alzheimer's Advertisements were intended to generate business for Armstrong Advisory Group.

54. In his testimony before the Enforcement Section, Armstrong stated with respect to the Alzheimer's Advertisements:

Well, if somebody calls in for an article, we make an effort to reach out to all of them that called in because that's part of our business development, that's how we gain clients. So we engage them in a favorable conversation, find out if they're qualified to be a client of ours, and offer to meet with them on a private basis.

(Emphasis added.)

55. In his testimony to the Enforcement Section, Armstrong stated that he did not keep track of which of Armstrong Advisory Group's clients became clients as a result of the Alzheimer's Advertisements.

56. However, in his testimony to the Enforcement Section, Armstrong estimated that, in general, Armstrong Advisory Group's radio advertisements generate most of its new clients.

57. In his testimony before the Enforcement Section, Armstrong estimated that the Alzheimer's Advertisements resulted in calls from more than 100 individuals.

58. Armstrong, Securities America, and Securities America Advisors attempted to generate clientele by purporting to provide information on Alzheimer's disease as part of a public service announcement in order to obtain client contact information, and then exploiting that information to market Armstrong and Securities America's services.

## VIII. VIOLATIONS OF LAW

### A. Armstrong's Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G)

59. Section 204(a)(2)(G) of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or

director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:—

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business.

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

60. Section 12.204(1)(b) of the Regulations provides:

Each agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of his or her business. Acts and practices, including, but not limited to, the following, are considered contrary to such standards and constitute dishonest or unethical practices in the securities industry and are thereby grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration or such other action as is appropriate:

(8) Engaging in conduct specified in 950 CMR 12.204(1)(a)1., 2., 3., 4., 5., 6., 10., 11., 12., 13., 18., 19., 22., 23., 27, or 28.

61. Section 12.204(1)(a) of the Regulations provides:

Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Acts and practices, including, but not limited to the following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration, or such other appropriate action:

(18) Making any advertising or sales presentation, either in written or oral form, in such a fashion as to be deceptive or misleading...

62. Section 12.205(9)(c)(8) of the Regulations provides:

The following practices are a non-exclusive list of practices by an adviser which shall be deemed "dishonest or unethical conduct or practices in the securities business" for purposes of M.G.L. c. 110A, § 204(a)(2)(G):

(8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the adviser, its representatives or any employees, or misrepresenting the nature of the advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

MASS. CODE REGS. 12.205(9)(c)(8).

63. The conduct of Armstrong, as described in Section VII above, constitutes violations  
MASS. GEN. LAWS ch. 110a, § 204(a)(2)(G).

### **IX. STATUTORY BASIS FOR RELIEF**

64. Section 204(a)(2)(G) of the Act provides, in pertinent part:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:—

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business.

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

65. Section 407A of the Act provides, in pertinent part:

(a) If the secretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

MASS. GEN. LAWS ch. 110A, § 407A.

### **X. PUBLIC INTEREST**

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter an order finding that such “action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter [MASS. GEN. LAWS ch. 110A].”

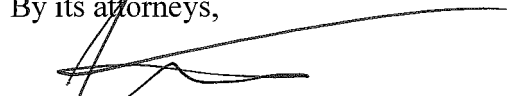
## **XI. RELIEF REQUESTED**

The Enforcement Section of the Division requests that the Director enter an order:

- A. Finding as fact all allegations set forth in Sections V to VII, inclusive, of the Complaint;
- B. Finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;
- C. Requiring Respondent to permanently cease and desist from violation of MASS. GEN. LAWS ch. 110A § 204 and the Regulations in the Commonwealth;
- D. Censuring Respondent;
- E. Imposing an administrative fine on Respondent in an amount and upon such terms and conditions as the Director or Presiding Officer may determine; and
- F. Taking any such further action which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.

### **MASSACHUSETTS SECURITIES DIVISION ENFORCEMENT SECTION**

By its attorneys,



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